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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/451,580	11/30/1999	DANIEL L. POOLE	3339-PA13	9240

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EXAMINER

SMITH, JAMES G

ART UNIT	PAPER NUMBER
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3723

DATE MAILED: 01/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/451,580	<b>Applicant(s)</b> POOLE ET AL.	
	<b>Examiner</b> James G. Smith	<b>Art Unit</b> 3723	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 November 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-6,8,9,22-24,29 and 39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6,8,9,22-24,29 and 39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 2, 4-6, 8, 9 and 29 are finally rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no antecedent basis for "said notch" in claim 1. Further, claim 4 is not drawn to the embodiment of figure 7 which has no "latch", thus it is indefinite.

3. Normally a claim which fails to comply with the first and/or second paragraph of § 112 will not be analyzed as to whether it is patentable over the prior art since to do so would of necessity require speculation with regard to the metes and bounds of the claimed subject matter, *In re Steele*, 308 F.2d 859, 862-63, 134 USPQ 292, (CCPA 1962) and *In re Wilson*, 424 F.2d 1382, 1385, 496 USPQ 494, 496 (CCPA 1970).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 24 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over any of Stratman, Sarvie (697) or Bothum in view of any of Smoyak et.al., Igarashi or Noniewicz et. al..

Any of Stratman, Sarvie (697) or Bothum shows the claimed invention except for the use of a spring secured around the pivot of a pliers type tool to bias the jaws open. Any of Smoyak et. al., Igarashi or Noniewicz et. al. suggests that a pliers type of tool can have a spring around the pivot member in order to bias the jaws into either an open or closed position, as desired. It would therefore be obvious to one skilled in the art at the time the invention was made to modify any of Stratman, Sarvie (697) or Bothum by using a spring carried around the pivot member because any of Smoyak et. al., Igarashi or Noniewicz et. al. suggests the use of such a spring for the purpose of biasing the jaws into either an open or closed position as desired.

6. Claims 22, 23 and 39 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over any of Stratman, Sarvie (697) or Bothum in view of either Petrie or Saila and Wolff et. al..

Any of Stratman, Sarvie(697) or Bothum shows the claimed invention except for the use of a plastic material of construction and the second end of the clamp bar being contained within the second member. Wolff et. al. suggests that a pliers type of clamp can be made of a plastic material to allow it to be flexible. It would therefore be obvious to one skilled in the art at the time the invention was made to modify any of Stratman, Sarvie(697) or Bothum by making any of them of a plastic material to make them more flexible because Wolff et. al. suggests the use of such a material in the manufacture of clamps or pliers for allowing for a greater degree of flexibility in the pliers type tool.

Further, both Petrie and Saila suggest that a locking clamp device with a clamp bar can be so constructed that the second end of the clamp bar can be contained within the handle. It would therefore be obvious to modify any of Stratman,

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Sarvie(697) or Bothum by constructing the clamp bar to be contained within the second handle because either Petrie or Saila suggest this type of construction is well known in this type of clamp and to use any well known type of construction to make the device is an obvious modification to one skilled in the art.

### ***Response to Arguments***

7. Applicant's arguments with respect to claims 1, 2, 4-6, 8, 9, 22-24, 29 and 39 have been considered but are moot in view of the new ground(s) of rejection.

Newly amended claim 1 is indefinite because of the newly created improper antecedent basis and claim 4 is not drawn to the claimed embodiment of figure 7 to which claim 1 is drawn.

Claims 22 and 39 have been amended to remove the spring and add the feature of figure 7, i.e. the clamp bar being within the second handle, however the newly cited prior art clearly shows this newly added limitation.

With respect to claim 24, clearly the patents to Stratman, Sarvie(697) or Bothum have an aperture which clearly is a "notch" and since the "notch" is on the handle, it, and all its elements, are integral with the handle, thus this limitation of claim 24 is clearly met.

### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

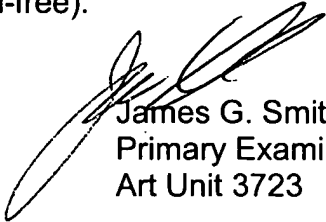
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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James G. Smith whose telephone number is 571-272-4496. The examiner can normally be reached on M-Th (7:05- 4:35) Fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail, III can be reached on 571-272-4485. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James G. Smith  
Primary Examiner  
Art Unit 3723

jgs  
1/11/05